

**Testimony Before the House Subcommittee on  
Regulatory Affairs: Plain-Language Bill**

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**March 1, 2006**

Madame Chair, I'm here today representing the Center for Plain Language. The Center is a private-sector nonprofit organization dedicated to promoting clearer communication in both the public and private sectors. I'm delighted to have this chance to testify about this important plain-language bill.

I have been involved in plain language issues since the mid 1990s. I am the vice-chair of the Center for Plain Language, and the Chair of a group of federal employees, called PLAIN, dedicated to getting their agencies to write better. I spent over four years at Vice President Gore's National Performance Review working to spread plain language principles throughout the government. I have worked on regulations for 20 years in four different federal agencies. I currently work at the Federal Aviation Administration, and spend all my time on plain language issues.

I believe there is a crisis of communication in America today. Every time I read a product guarantee, credit card agreement, computer or camera manual, Medicare statement, phone bill, federal regulation, I am stunned at how much time I have to spend trying to understand this material. And I know that I'm lucky—if I work at it, I can understand. Considering literacy issues in this country, I'm sure many can't.

While poor writing isn't restricted to the federal government, I believe the government has a higher responsibility to communicate clearly with citizens. American taxpayers bear the cost of the government, and they deserve to understand what the government is doing. When I read text like the following, I am stunned that we would expect citizens to understand our language:

The amount of expenses reimbursed to a claimant under this subpart shall be reduced by any amount that the claimant receives from a collateral source. In cases in which a claimant receives reimbursement under this

subpart for expenses that also will or may be reimbursed from another source, the claimant shall subrogate the United States to the claim for payment from the collateral source up to the amount for which the claimant was reimbursed under this subpart.

That's from a regulation of the Department of Justice. And what does it mean? Simply that

1. If you get a payment from another source, we will reduce our payment by the amount you get.
2. If you already got payments from us and from another source for the same expenses, you must pay back what we paid you.

Besides being expensive, time-consuming, and annoying, often our complex government language can impact health and safety. Today, protecting health and safety are two of the most important missions of government, and if we don't communicate clearly about these issues we fail in our duty to the public. Consider this example from a FEMA website giving citizens advice about dealing with cold weather hazards:

**Winter Preparedness Safety Tips:** Timely preparation, including structural and non-structural mitigation measures to avoid the impacts of severe winter weather, can avert heavy personal, business and government expenditures. Experts agree that the following measures can be effective in dealing with the challenges of severe winter weather.

To FEMA's credit, they later revised this page to read:

**Winter Preparedness Safety Tips**

Severe winter weather can be extremely dangerous. Consider these safety tips to protect your property and yourself.

I could give you thousands—indeed hundreds of thousands—of similar examples from the government. Regulations in particular are a fertile source of examples of complex and obscure writing. Regulations could be said to be the language of the federal government. Regulations tell Americans how to get benefits, how to meet safety standards, and how to pay their taxes.

There are now over 200,000 pages in the Code of Federal Regulations. Agencies and the private sector use them as models when drafting related documents. Their impact flows down to everyone affected by regulations. Consider Professor Kimble's example of the airline exit cards. The language on the card is taken directly from a federal regulation. Airlines don't have to use the exact regulatory language, but more often than not they do. And that's what usually happens in both the public and private sector when someone writes a document carrying out a regulatory requirement. There are two reasons for this.

First, it's easier. Writing clearly is hard work. Most people don't bother rewriting federal regulatory language into something easy to understand—it's too much work.

Second, and more importantly, they don't want to risk being criticized or penalized for failing to comply with some requirement. The safest way to make sure they comply is to just quote the regulation. No one considers that this may make it hard for the reader to understand.

Unclear or unreadable regulations make work for the reader and for the agency that issues them. Worse yet, the reader who doesn't understand may comply incorrectly or simply not comply at all. Overall, writing regulations in a clear and easily readable style would result in a huge savings of time and effort for the federal government and for citizens affected by them and by the documents modeled after them.

Since at least the late 1970s, there have been efforts to move the government toward a better model of writing. And regulations have been the main focus of these efforts. The group of federal employees working on plain language issues—PLAIN--has met at least monthly for 10 years. PLAIN members are working tirelessly to promote better communication within their agencies and to provide help to other federal employees interested in the initiative. The group has provided free training to introduce plain language to over 5000 federal and contract employees.

Despite these efforts, most federal regulations are still complex, bureaucratic, and difficult to understand, even in those agencies making an effort to communicate more clearly. The agencies find it easier to write in the usual bureaucratic style than to make the extra effort to communicate effectively. They will not take on the task of cleaning up their act and

writing their regulations in a way that allows the intended reader to understand them unless you establish a legal obligation for them to do so.

Let's take a quick look at a few final examples to show what's possible in writing federal regulations. In the first four, the agency itself rewrote the regulation. The last two are my suggested revisions.

## **Regulation 1**

### **Sec. 11.55 Reconsideration of a denial or grant of exemption.**

. . . if a petition for exemption is denied, the petitioner may file a petition for reconsideration with the Administrator. The petition must be filed, in duplicate, within 30 days after the petitioner is notified of the denial of the exemption. A petition for reconsideration under this section must be based on the existence of one or more of the following: (1) A finding of a material fact that is erroneous.(2) A necessary legal conclusion that is without governing precedent or is a departure from or contrary to law, FAA rules, or precedent.(3) An additional fact relevant to the decision that was not presented in the initial petition for exemption. In order for a petition under paragraph (1) or (3) of this section to be based on this ground, the petition for reconsideration must state the reason the additional fact was not presented in the initial petition.

### **11.101 May I ask FAA to reconsider my petition for rulemaking or petition for exemption if it is denied?**

Yes, you may petition FAA to reconsider your petition denial. You must submit your request to the address to which you sent your original petition, and FAA must receive it within 60 days after we issued the denial. For us to accept your petition, show the following:

- (a) That you have a significant additional fact and why you did not present it in your original petition;
- (b) That we made an important factual error in our denial of your original petition; or
- (c) That we did not correctly interpret a law, regulation, or precedent.

FAA regulation

## **Regulation 2**

### **Sec. 3502.1 Who may hold leases and permits.**

(a) Leases and permits may be held only by citizens of the United States, associations (including partnerships and trusts) of such citizens, corporations organized under the laws of the United States or of any State or territory thereof. Citizens of a foreign country may only hold

interest in leases or permits through stock ownership, stock holding or stock control.

(b) Citizens of a foreign country may only hold interests in leases and permits for leasable minerals if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. A list of those countries denying similar or like privileges is available from any Bureau office.

(c) A mineral lease or permit shall not be issued to a minor. Leases or permits may be issued to a legal guardian or trustee of a minor.

### **3502.10 Who may hold permits and leases?**

You may hold an interest in permits or leases under this part only if you meet the requirements of 30 U.S.C. 184. You must be:

- (a) An adult citizen of the United States;
- (b) An association (including partnerships and trusts) of such citizens;
- (c) A corporation organized under the laws of the United States or of any U.S. State or territory;
- (d) A legal guardian of a minor United States citizen;
- (e) A trustee of a trust where the beneficiary is a minor but the trustee is qualified to hold a permit or lease; or
- (f) any other person authorized to hold a lease under 30 U.S.C. 184.

BLM regulation

### **Regulation 3**

If the location of the land is in a state other than the state in which the tribe's reservation is located, the tribe's justification of anticipated benefits from the acquisition will be subject to greater scrutiny.

If the land is in a different State than the tribe's reservation, we will scrutinize the tribe's justification of anticipated benefits more thoroughly.

Bureau of Indian Affairs regulation

### **Regulation 4**

When the process of freeing a vehicle that has been stuck results in ruts or holes, the operator will fill the rut or hole created by such activity before removing the vehicle from the immediate area.

If you make a hole while freeing a stuck vehicle, you must fill the hole before you drive away.

National Park Service regulation

### **Regulation 5**

When a filing is prescribed to be filed with more than one of the foregoing, the filing shall be deemed filed as of the day the last one actually receives the same.

Department of Justice regulation

Suggested rewrite:

We consider a filing to have occurred when all those who must receive the filing receive it.

### **Regulation 6**

No payment shall be made to (or on behalf of) more than one individual on the basis of being the public safety officer's parent as his mother, or on that basis as his father.

Department of Justice regulation

Suggested rewrite:

We will pay only one person claiming to be the public safety officer's father and only one claiming to be the mother.

These few examples show what's possible when we try to write clear regulations. But I would challenge anyone to find even 5000 out of the 200,000 pages of federal regulations written in a clear style.

In closing, I want to urge you to think of the impact clearer regulations will have on the American people, not as a whole, but as individuals. Clearer regulations will mean that –

- a veteran who needs medical help will be able to understand what she needs to do

- a family wanting to drive an off-road vehicle in a national park will be sure that they're going to follow the rules and not injure plants or wildlife

- a small business owner will be able to claim tax benefits and other special considerations to which he's entitled

- a school wanting to comply with the No Child Left Behind Act will be able to figure out what to do without reading the regulation five times

- a senior citizen, hospital, or pharmacy will be able to understand immediately what Medicare or drug benefits apply

There are many Federal employees who want to bring the benefits of plain language to all agency regulations. By passing a plain language law, you will give them a powerful tool and, most importantly, you will improve the lives of millions of Americans.